

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A SHORELINE
VARIANCE PERMIT ISSUED BY KING
COUNTY TO GERALD C. KNUTZEN, AND
APPROVED BY WASHINGTON STATE
DEPARTMENT OF ECOLOGY,

GERALDINE A. and HENRY B. CASTLE,

Appellants,

v.

GERALD C. KNUTZEN, KING COUNTY
and WASHINGTON STATE DEPARTMENT
OF ECOLOGY,

Respondents.

SHB No. 80-24

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER

This matter, a request for review from the approval by King County of a Shoreline Variance Application by the respondent, Gerald C. Knutzen, which was approved by the Department of Ecology, came before the Shorelines Hearings Board, Nat W. Washington, presiding, Robert S. Derrick and A. M. O'Meara, members, at a formal hearing in Seattle, Washington, on November 13, 1980.

1 Appellants were represented by their attorney David A. Alskog;
2 respondent King County was represented by Deputy Prosecuting Attorney
3 Robert D. Johns; respondent Department of Ecology was represented by
4 Assistant Attorney General Jeffrey D. Goltz; and respondent Gerald C.
5 Knutzen was represented by his attorneys Judith M. Runstad and
6 Catherine R. Hall. Reporter Diane Lochman recorded the proceedings.

7 Having heard or read the testimony, having examined the exhibits
8 and briefs, and having considered the contentions of the parties, the
9 Shorelines Hearings Board makes these

10 FINDINGS OF FACT

11 I

12 Respondent Gerald C. Knutzen owns a lot in King County fronting on
13 Puget Sound near Redondo. The landward portion of the lot has a
14 frontage of about 77 feet on Puget Sound and extends landward about 77
15 feet on its easterly boundary and about 100 feet on the westerly
16 boundary. The northerly dimension of the lot is about 60 feet. A
17 narrow driveway about 12 feet in width extends about 100 feet
18 southerly from the southwesterly corner of the lot to connect with
19 SW 292nd Street.

20 The lot is relatively flat for about 25 feet back of the
21 bulkhead. The remainder of the lot has a steep slope of about 30
22 degrees up a vertical rise of about 30 feet.

23 A small 22' x 42' single-story, wood frame house, about 40 years
24 old, is located immediately adjacent to the bulkhead and extends
25 southerly to about the toe of the steep bank.

1 II

2 Knutzen determined to remove the old house and construct a much
3 larger house in its place. It was planned that the new house would be
4 built further back from the bulkhead than the old house had been; but
5 a portion of the new structure would be within 20 feet of the ordinary
6 high water mark, resulting in a failure to meet the 20-foot setback
7 requirement of the King County Code Section 25.16.100(c), King County
8 Shoreline Management Code Section 409(2)(c). For this reason a
9 variance was required. On March 27, 1980, Knutzen filed an
10 application with King County for a variance.

11 The proposed development, as stated in the application, consisted
12 of a three-story, single-family residence with an average height above
13 the terrain of 25 feet, well within the 35 foot average maximum height
14 allowed by King County Code Section 25.16.100(c). The plan provided
15 for an excavation in the steep slope to accommodate a portion of the
16 structure.

17 III

18 The appellants Henry B. Castle and Geraldine A. Castle
19 (hereinafter Castle), whose property abuts the property of Knutzen on
20 the south and on the west, objected to the variance. Their chief
21 objections were:

- 22 1. That the proposed residence would block a portion of the view
23 from their home, which is located above the steep bank and to the
24 southwest;
- 25 2. That the steep bank was unstable and the excavation into it
26 would further weaken it and cause damage to their property;
- 27

1 3. That the scope and size of the proposed development was
2 excessive for the size of the lot, and not in keeping with the
3 residences in the surrounding area;

4 4. That the development would also need a variance from the
5 Master Program requirement that a setback of 20 feet be maintained
6 from the upland edge of steep slope.

7 The County granted the Variance; but in order to minimize view
8 impairment, Knutzen was required to lower the elevation of his house
9 by 4 feet so that the elevation of the roof line would be below the
10 elevation of the bottom of the windows of the northerly wing of the
11 Castle residence.

12 IV

13 There is an excellent broad front view of the Puget Sound and the
14 Olympic Mountains from the Castle residence. The proposed development
15 as lowered in elevation by the condition attached to the variance will
16 still impinge somewhat on the view from appellants' residence and
17 decks, but the effect will be minimal. The broad sweeping horizontal
18 view of the Olympic Mountains and the broad expanse of the Sound will
19 be left intact, except that in the lower corner of the far
20 northeasterly segment of the total view (lower right hand corner) a
21 very small section of the Sound along the near shore will be blocked
22 from view from the northeast section of the house (the bedroom,
23 kitchen, dining area). From the living room and the decks there will
24 be no impairment of the sweeping horizontal view of the Sound and
25 mountains, but looking downward and to the right toward the beach, a
26 very small area along the beach will be obscured.

V

The proposed excavation into the steep slope and removal of vegetation was not shown to pose a threat to appellant's property. The Knutzen property is shown on the slope stability map in the Coastal Zone Atlas for King County, Volume 6, as being stable. This conclusion was supported by competent expert testimony and documentary evidence.

VI

The scope and size of the proposed development is not excessive for the size of the lot and is not out of keeping with the existing residences in the area.

VII

The replacement of the old house, which crowds right up to the bulkhead, with the new house, which is set back considerably further on the lot will result in a substantially improved shoreline.

VIII

Because of topographic conditions and size and shape of the lot, the strict application of the 20 foot setback requirement would significantly interfere with the reasonable permitted use of the property.

IX

The public interest will suffer no substantially detrimental effect by reason of the variance.

X

The variance for the proposed residence, as authorized, does not constitute a grant of special privilege not enjoyed by other

1 property owners in the area and will be the minimum necessary to
2 afford relief. The setback, as permitted by the variance, places the
3 new house back from the line of ordinary high water than the old
4 house, and further back than several houses in the immediate area.

5 XII

6 If a variance were granted in other cases under similar
7 circumstances, the cumulative impact would not produce substantial
8 adverse effects to the shoreline environment.

9 XIII

10 Any Conclusion of Law which should be deemed a Finding of Fact is
11 hereby adopted as such

12 From these Findings the Board makes these

13 CONCLUSIONS OF LAW

14 I

15 The appellants' primary contention is that the proposed
16 development will substantially impair the view from their home and
17 therefore does not meet that part of the variance criteria set forth
18 in WAC 173-14-150(2)(c) which provides that "the design of the
19 project...will not cause adverse effects to adjacent properties...."
20 The blockage of only a very small segment of appellants' overall view
21 has such a minimal adverse effect on their property that it does not
22 prevent the development from meeting the (2)(c) Variance criterion.
23 Severns v. DOE, SHB 80-2 (1980). Appellants did not establish the
24 existence of any adverse effects so as to invalidate the variance
25 permit on this basis.

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER

1 Appellants cite RCW 90.58.320 in support of their contention.

2 This section provides that no Substantial Development Permit will be
3 granted for a structure whose height is "more than 35 feet above
4 average grade level on shorelines of the state which will obstruct the
5 view of a substantial number of residences." Knutzen's proposed home,
6 however, will have a height of less than 35 feet above the average
7 natural grade level and will only minimally impair the view of a
8 single residence.

9 II

10 The variance granted by King County is consistent with the review
11 criteria for variance permits set forth in the SMP, WAC 173-14-150 and
12 the policies of chapter 90.58 RCW.

13 III

14 King County Code Section 25.16.100(c) states:

15 Single family developments shall maintain a
16 shoreline setback of 20 feet from either the
17 ordinary high water mark or from the upland edge of
the floodway or from the upland edge of the areas
of steep slope, slide hazard, or unstable soils,
whichever is greater.

18 This section requires only that a single family development be set
19 back 20 feet from one of the three designated points. In this
20 instance the pertinent setback is measured from the ordinary high
21 water mark, and a variance for this was granted. For this reason
22 there was no necessity for the county to issue a variance relative to
23 a 20 foot setback from the upland edge of the area of the steep slope.

24 IV

25 The failure of the appellants to serve their request for review

1 upon King County and the permittee, Gerald C. Knutzen, within the
2 statutory 30-day period is not a jurisdictional matter and does not
3 constitute grounds for dismissal. Foulks v. State of Washington, SHB
4 No. 80-17.

5 V

6 Appellants did not meet the burden of proof in this appeal,
7 therefore the variance granted by King County should be affirmed.

8 VI

9 Any Finding of Fact which should be deemed a Conclusion of Law is
10 hereby adopted as such.

11 From these Conclusions the Board enters this
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ORDER

The Variance Permit issued by King County is affirmed.

DONE this 29th day of January, 1981.

SHORELINES HEARINGS BOARD


MAX W. WASHINGTON, Chairman


ROBERT S. DERRICK, Member


A. M. O'MEARA, Member


DAVID AKANA, Member